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REGULATORY AUTH.

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June 22, 1999

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Guy M. Hicks
General Counsel

OFFICE OF THE
EXECUTIVE SECRETARY

VIA HAND DELIVERY

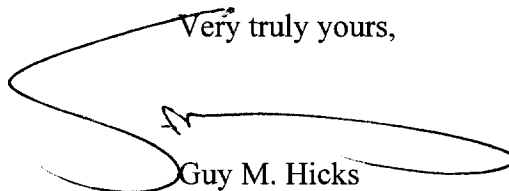
David Waddell, Executive Secretary
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37238

Re: *BellSouth Telecommunications, Inc.'s Tariff for Implementation of Intrastate
Directory Assistance Charges*
Docket No. 99-00391

Dear Mr. Waddell:

Enclosed are the original and thirteen copies of the Response Of BellSouth Telecommunications, Inc. To The Consumer Advocate Division's Petition For Declaratory Order; Complaint And Petition For Injunctive Relief. Copies of the enclosed are being provided to counsel of record for all parties.

Very truly yours,



Guy M. Hicks

GMH:ch
Enclosure

BEFORE THE TENNESSEE REGULATORY AUTHORITY
Nashville, Tennessee

In Re: *BellSouth Telecommunications, Inc.'s Tariff for Implementation of Intrastate Directory Assistance Charges*

Docket No. 99-00391

RESPONSE OF BELL SOUTH TELECOMMUNICATIONS, INC.
TO THE CONSUMER ADVOCATE DIVISION'S
PETITION FOR DECLARATORY ORDER; COMPLAINT
AND PETITION FOR INJUNCTIVE RELIEF

I. INTRODUCTION

In an attempt to re-argue legal issues it has already argued and lost,¹ the CAD has filed a Petition for Declaratory Order; Complaint and Petition for Injunctive Relief ("Petition") seeking to delay the approval of the Directory Assistance tariff filed by BellSouth Telecommunications, Inc. The CAD makes this filing despite the fact that:

the TRA has issued a final order stating that "directory assistance is a Non-Basic service under Tenn. Code Ann. §65-5-208(a)," September 4, 1997 Order in Docket No. 96-01423 at 17 ("United DA Order");

BellSouth's Directory Assistance tariff is entirely consistent with the terms of the United DA Order, *Id.* at 17-18; and

the TRA has issued a final order stating that "BellSouth's application for a price regulation plan with an effective date of October 1, 1995 with the rates existing on June 6, 1995, is hereby approved." December 9, 1998 Order in Docket No. 95-02614 at 21 ("BellSouth Price Regulation Order").

As explained below, the TRA should deny the CAD's petition to convene a contested case because the CAD's "Complaint" is simply an attempt to re-hash the same arguments it has already lost before the TRA.

¹The allegations in the CAD's Petition are reminiscent of the arguments set forth in the barrage of fourteen post-hearing documents the CAD filed in Docket No. 96-01423 (addressing the directory assistance tariff filed by United Telephone Southeast, Inc.) in a futile attempt to avoid the TRA's final order deciding that directory assistance is a non-basic service.

The TRA should also reject the CAD's attempt to improperly seek another bite at the apple by asking the TRA to "declare that directory assistance service was included in BellSouth's basic service tariff and was usage on June 6, 1995." Petition at 9. As explained below, the CAD should not be allowed to clog the TRA's docket and delay the implementation of a lawful tariff by using a request for a declaratory order -- which the TRA is permitted by statute to deny -- as a mechanism to re-argue the TRA's final order stating that "directory assistance is a Non-Basic service under Tenn. Code Ann. § 65-5-208(a)." *See* United DA Order at 17. In other words, the CAD's refusal to accept this plain legal ruling simply does not justify the time and effort of convening a contested case to simply affirm that the TRA's order means what it says.

Finally, in the most desperate and least credible ploy to date, the CAD suggests that a proposed settlement agreement which pre-dates both the price regulation statutes and the TRA's orders referenced above limits BellSouth's ability to implement a lawful charge for directory assistance services. This perplexing assertion ignores the fact that the proposed agreement relied upon by the CAD: (1) was submitted for the review and possible approval of the Tennessee Public Service Commission ("PSC"); (2) was never approved by either the PSC or the TRA; (3) was submitted to address a dispute regarding a proposed tariff that never went into effect; (4) was submitted in a docket that was dismissed nearly three years ago; and (5) by its own terms would have expired more than two years ago even if it had been approved. Clearly, the TRA should summarily reject the CAD's improper attempt to convert an agreement that never went into effect into an injunction prohibiting or limiting BellSouth's lawful Directory Assistance tariff.

BellSouth, therefore, respectfully submits that the TRA should deny the CAD's Petition in its entirety.

II. DISCUSSION

A. The TRA Should Refuse To Convene A Contested Case Because The CAD's "Complaint" Is Based On Legal Arguments That The TRA Has Rejected In Recent Orders

Although the dockets have changed, the arguments remain the same as they were in the United directory assistance docket and in BellSouth's price regulation docket. In this docket, the CAD asserts that "the tariff of BellSouth to increase the price of directory assistance is an increase of basic local telephone service rates," (CAD Petition at 5, ¶ 18) , and it asks the TRA to "declare the meaning of the term 'usage' in Tenn. Code Ann. § 65-5-208." CAD Petition at 9. The CAD also asks that the TRA "upon determining the meaning of the term 'usage' determine whether said term applies to services that were tariffed as basic services² on June 6, 1995." (CAD Petition at 9). The CAD, however, has already raised -- and lost -- these same legal arguments in United's directory assistance docket. As the TRA correctly noted in its final order in that docket, the CAD "claimed that directory assistance is a Basic service under the term 'usage' as found in Tenn. Code Ann. §65-5-208(a)(1)."³ United DA Order at 13. Despite this claim, the TRA issued a final order

²Paragraphs 10 through 12 of the Petition seem to suggest that a 1994 tariff reference to directory assistance charges under the general heading "basic local exchange service" means that BellSouth's directory assistance service is a basic service under the price regulation statutes enacted nearly a year later. If a company operating under price regulation had a 1994 tariff listing touch-tone as a non-basic service, no person or entity reasonably could argue that the 1994 tariff classification prevails over the 1995 statute which clearly states that touch-tone is a basic service. Instead, just the opposite is true: the subsequent statutory classification of touch-tone as a basic service would prevail over the pre-existing tariff classification. Similarly, the subsequent statutory classification of directory assistance as a non-basic service prevails over any pre-existing and allegedly contrary tariff classification.

³ See also *Response of Consumer Advocate Division* at p. 2, Docket No. 96-01423 ("Even though it is true that there was no express legislative declaration of directory assistance as a basic service, and that the Consumer Advocate Division stated to the General Assembly that the then-amended legislation did not expressly make directory assistance a basic service, does not mean that directory assistance and other services included in the basic service charge was not usage contemplated by the statute."); *Response of Consumer Advocate Division* at p. 5, Docket No. 96-01423. ("Therefore, the enacted version of the legislation essentially set a time frame for establishing free usage. The tariff changing usage had to be approved before June 6, 1995, or else usage was set under the basic telephone service classification As a result, usage continues to include directory assistance and the usages on that date are now custom and law.") Indeed, these are the very same arguments that the CAD has made to the Court of Appeals. See page

which clearly ruled that directory assistance is a non-basic service. Nonetheless, the CAD has filed a "Complaint" in this action based on its erroneous legal argument that directory assistance is a basic service.

The CAD also erroneously alleges that the TRA's Order approving BellSouth's application for a price regulation plan "did not specify when BellSouth becomes subject to price regulation" Petition at 2, ¶5. This Order, however, clearly states that the TRA "exercises its discretion and finds that October 1, 1995, is the appropriate effective date [of BellSouth's approved price regulation plan]." BellSouth Price Regulation Order at 19. The first ordering clause in the Order makes it clear that "BellSouth's application for a price regulation plan with an effective date of October 1, 1995 with the rates existing on June 6, 1995, is hereby approved." *Id.* at 21. Despite the plain language of this Order, the CAD has filed a Complaint in this action based on its erroneous legal argument that the Order does not specify when BellSouth becomes subject to price regulation.

The CAD's filing, however, does not require the TRA to convene a contested case. The Supreme Court of Tennessee recently noted that "the TRA has the power to convene a contested case hearing if it chooses to exercise the authority," *Consumer Advocate Div. v. Greer*, 967 S.W.2d 759, 763 (Tenn. 1998), and it held that "§65-5-203(a) does not impose a mandatory duty upon the TRA to convene a contested hearing in every case upon the filing of a written complaint." *Id.* at 764. Because the legal arguments asserted by the CAD in its Petition are identical to the arguments it vainly raised in the United directory assistance case, the TRA should not convene a contested case to re-hear the same arguments that it has already decided.

31 Brief of Petitioner, CAD, Docket No. 01A01-9711-BC-00627 ("At the time of the enactment of this definition [§ 65-5-208(a)], citizens of Tennessee were provided with the 'usage' of directory assistance without a specific additional charge.")

B. The TRA Should Reject The CAD's Attempts To Re-Argue Issues It Has Already Lost By Asking For One Or More Declaratory Orders Interpreting The Plain Language Of The TRA's Prior Orders.

By quoting only a portion of §4-5-223, the CAD's Petition suggests that the TRA has no choice but to initiate a contested case proceeding to consider its requests for declaratory orders. That simply is not the case. Although it is not quoted in the CAD's Petition, subsection (a)(2) of §4-5-223 plainly states that an agency may "refuse to issue a declaratory order" For the reasons explained below, the TRA should exercise its discretion to deny the CAD's requests for declaratory orders.

The CAD requests the TRA to issue declaratory orders interpreting its prior orders in United's DA docket and in BellSouth's price regulation docket. Apparently the CAD is asking the TRA to convene a contested case, conduct a hearing, and issue an order explaining what it meant when it stated in clear and unequivocal language that: (1) "directory assistance is a Non-Basic service under Tenn. Code Ann. § 65-5-208(a)," United DA Order at 17; and (2) "BellSouth's application for a price regulation plan with an effective date of October 1, 1995 with rates existing on June 6, 1995, is hereby approved."⁴ BellSouth Price Regulation Order at 23. How much more clearly could the TRA have stated these rulings?

⁴The CAD's suggestion that BellSouth is not under price regulation and that the General Assembly did not intend "for an incumbent local exchange company to 'become' subject to price regulation in the past" is yet another attempt to re-argue issues that have already been decided and that are presently on appeal. See Petition at 2, ¶¶ 5-6. In its December 9, 1998 Order, the TRA acknowledged the argument that "[n]othing in TCA Section 65-5-209 or in any other statute or in any opinion of the Court gives the TRA the power to approve, implement, or make effective the price regulation plan retroactively." BellSouth Price Regulation Order at 19. As the TRA noted, however,

After carefully and painstakingly reviewing the record before it, the Court [of Appeals] rendered a well-written and well-reasoned opinion that the Authority is bound to follow. The Authority has received this remand from the Court of Appeals with a lawful directive to approve BellSouth's application for a price regulation plan. After reviewing the Court's opinion and the briefs of the parties, the Authority must conclude that the Court said what it meant and meant what it said.

In reality, the CAD's requests for declaratory orders explaining how these rulings relate to BellSouth's Directory Assistance tariff is a thinly-veiled attempt to get yet another bite at the apple simply because the CAD does not like these rulings. With regard to directory assistance as a basic service, however, the CAD has already presented pre-filed testimony, cross-examined witnesses, filed fourteen post-hearing documents (including at least three post-hearing "briefs"), appealed the TRA's final order, submitted two appellate briefs, and presented oral argument before the Court of Appeals. With regard to BellSouth's application for a price regulation plan, the CAD has already opposed the legislation enacting the price regulation statutes, opposed nearly every one of BellSouth's filings regarding its application, presented pre-filed testimony, cross-examined witnesses, filed briefs, participated in the appeal of the PSC's order regarding BellSouth's application for price regulation, submitted an appellate brief addressing that order, presented oral argument before the Court of Appeals, submitted a document challenging the Court of Appeals' Opinion which the Court summarily rejected as "an unfocused fusillade of complaints," petitioned the Supreme Court for review to no avail; challenged the TRA's authority to implement the clear directive of the Court of Appeals, and appealed the TRA's final order implementing that directive. No more bites at the apple are warranted.

C. The CAD's Claim That BellSouth's Directory Assistance Tariff Should Be Enjoined By The Authority Because BellSouth Allegedly Breached A Settlement Agreement Is Meritless.

In a last-ditch effort to prevent BellSouth from implementing a lawful charge for directory assistance, the CAD attempts to breathe new life into a document that never had the breath of life in the first place. In 1994 -- before the price regulation statutes, before the TRA order stating that

Id. at 15-16. The Order then unequivocally states that the TRA "exercises its discretion and finds that October 1, 1995, is the appropriate effective date [of BellSouth's approved price regulation plan]." *Id.* at 19. Again, the fact that the CAD does not like this ruling does not mean that a declaratory order that the TRA "said what it meant and meant what it said" is necessary or appropriate.

directory assistance is a basic service, and before the TRA order approving BellSouth's application for a price regulation plan -- BellSouth filed a proposed tariff with the PSC. This tariff, if approved, would have allowed BellSouth to charge for Directory Assistance services. The CAD intervened in the docket and opposed the tariff.

On February 3, 1995, BellSouth and the CAD submitted a proposed settlement agreement to the PSC by which the CAD agreed not to oppose BellSouth's proposed tariff as long as it contained certain terms and conditions. *See* February 3, 1995 Agreement (Attached as Exhibit 1). The proposed agreement states that it "should be presented and recommended to the Public Service Commission," *Id.* at 1, and it states that BellSouth and the CAD "recognize that the Tennessee Public Service Commission has the authority to approve or disapprove tariffs, rates, and related issues." *Id.* at 1.

The agreement sets out certain terms and conditions related to the proposed tariff, and it expressly states that "the proposed effective date of this tariff will be March 15, 1995" *Id.* at 3, ¶12. In exchange for the CAD's agreement to support a directory assistance tariff incorporating the terms and conditions specified in the proposed agreement, *Id.* at 4, ¶15, BellSouth agreed that it

will not file a petition or tariff seeking a DA rate increase or change in allowances for a period of two years from the effective date of this tariff. Nothing in this agreement, however, commits the Consumer Advocate Division to support price or allowance changes at that time.

Id. at 1, ¶4. Clearly, the proposed agreement provided that the CAD would not oppose a BellSouth tariff containing certain terms and conditions -- if BellSouth had proposed a different tariff, the CAD would have been free to oppose it. The proposed agreement also provided that if a tariff incorporating those terms and conditions was approved by the PSC, BellSouth would not propose a rate increase or a change in the number of allowances until two years after the effective date of the tariff. Based on the proposed effective date to which the CAD agreed, this would have been March

1997. After that date, BellSouth would have been free to propose such increases or changes, and the CAD would have been free to contest them.

The PSC, however, never approved the settlement agreement proposed by BellSouth and the CAD, and the docket addressing BellSouth's proposed 1994 directory assistance tariff remained unresolved when the PSC ceased functioning on June 30, 1996. At its August 13, 1996 Conference, the TRA voted unanimously to dismiss this docket⁵, *See* Transcript of August 13, 1996 TRA Conference at 66-67 (Attached as Exhibit 2), and the TRA notified BellSouth that its directory assistance tariff filing (Tariff No. 94-223, Docket No. 94-02876) "was closed by action of the Authority during the Conference of August 13, 1996 under docket 94-02876, and will not become effective." August 19, 1996 Letter (emphasis in original) (attached as Exhibit 3). The CAD, which had been a party to this docket, did not appeal the TRA's dismissal of the docket or its decision that BellSouth's proposed tariff would not become effective.

Having failed to appeal the TRA's decision nearly three years ago, the CAD now asserts that it is entitled to apply the terms of this proposed settlement agreement to BellSouth's current directory assistance filing. This assertion ignores the fact that while PSC approval of BellSouth's

⁵ The CAD's allegation "that no hearing or motion withdrawing the tariff was ever held" (Petition at 7, ¶ 33) is misleading at best. On July 2, 1996, the TRA held a hearing and heard oral arguments to determine how to address dockets that had remained pending before the PSC on June 30, 1996. *See* Transcript of July 2, 1996 TRA Conference, Item 4 (Oral Arguments – Incomplete Dockets before TPSC). General Williams represented the CAD during this hearing. *Id.* The TRA adopted procedures regarding such dockets during its July 9, 1996 conference, *see* Transcript of July 9, 1996 TRA Conference, and on July 18, 1996 the TRA issued its "Notice of Administrative Order No. 1" addressing those procedures. (Attached as Exhibit 4). This notice was sent to "all parties in the cases which are the subject of this Order," *id.*, and BellSouth's Directory Assistance tariff (Docket 94-02876) is listed in the attachment as one of the proceedings to which the order applies. *Id.* The CAD did not appeal the Order. Finally, the TRA's Conference Agenda for August 13, 1996 lists as item number (10) "**FINALITY OF PSC CASES PENDING ON JUNE 30, 1996, NOT RECOMMENCED WITH THE TRA PURSUANT TO THIS AGENCY'S ADMINISTRATIVE ORDERS.**" (emphasis in original) (Attached as Exhibit 5). One of the cases listed under this heading is "94-02876 South Central Bell (Directory Assistance)." *Id.* The CAD, therefore, cannot in good conscience claim that the TRA's dismissal of Docket No. 94-02876 nearly three years ago was done without proper notice or without providing all affected parties the opportunity to be heard.

proposed directory assistance charges was required by statute in 1994, current statutes permit BellSouth to set its price for directory assistance "as the company deems appropriate." T.C.A. §65-5-209(h). The assertion also ignores the fact that the proposed agreement would have become effective only upon the PSC's approval of the agreement, and neither the PSC nor the TRA approved the agreement. Instead, the TRA dismissed the proposed agreement by dismissing the entire docket and ruling that BellSouth's proposed tariff would not become effective. The CAD's assertion further ignores the fact that both the CAD and BellSouth anticipated an effective date of March 1995 for the proposed tariff, and the proposed agreement provides that BellSouth would refrain from seeking a directory assistance rate increase or a change in allowances for only two years -- until March 1997. Even if the proposed agreement ever had been approved, and even if such an agreement would have any application whatsoever to the implementation of statutes enacted after the agreement had been entered (which BellSouth denies), the Agreement would have ceased to prevent BellSouth from filing its Directory Assistance tariff more than two years ago. Thus, contrary to the CAD's bald assertions, BellSouth simply did not breach this proposed settlement agreement.⁶

Although the CAD did not seek a stay of the TRA's final order in the United directory assistance docket from either the TRA or the Court of Appeals, the CAD now asks the Authority to enjoin BellSouth's directory assistance filing. In considering the CAD's request for an injunction, however, the TRA must consider the following factors: (1) the likelihood of the CAD's success on

⁶The CAD states that BellSouth did not contact the CAD prior to filing its directory assistance tariff. Petition at 8, ¶36. After the CAD has spent the past two years fighting every attempt to implement a lawful directory assistance charge, claiming that such charges are unlawful every step of the way, it cannot possibly suggest that negotiations would have been fruitful. Additionally, the state of the law has changed dramatically since the docket addressing BellSouth's 1994 proposed directory assistance tariff was dismissed. Today, BellSouth is entitled to set its prices for directory assistance "as the company" -- not the CAD -- "deems appropriate." T.C.A. §65-5-209(h). BellSouth, therefore, had no duty and no reason to contact the CAD regarding its filing.

the merits of its claims; (2) the likelihood that the CAD would suffer irreparable injury without an injunction; (3) the likelihood that other parties would suffer substantial harm absent an injunction; and (4) the likelihood that the public would be harmed absent an injunction. *See Doe v. Sundquist*, 106 F.3d 702-705 (6th Cir.), *cert. denied* 118 S.Ct. 51 (1997). Given the CAD's inability to prove these factors, it is not surprising that the CAD's Petition does not address them.

First and foremost, the CAD cannot demonstrate a likelihood of success on the merits of any of its claims. The TRA has already ruled that the CAD's assertions that directory assistance is a basic service and that BellSouth is not operating under price regulation are simply wrong. Moreover, as demonstrated above, the CAD simply cannot support its assertions that BellSouth has somehow breached an agreement that never went into effect. The CAD, therefore, cannot demonstrate a likelihood of success on the merits of its claims.

Additionally, the TRA has already issued a final and conclusive ruling that incumbent local exchange companies operating under price regulation may charge for directory assistance and that the four-year price freeze on basic services does not apply to directory assistance. The CAD has not -- and cannot -- explain how BellSouth's implementation of a charge the TRA has already deemed lawful (and which United has already implemented) somehow is contrary to the public interest or somehow results in legal harm to the CAD or others. The fact that the CAD does not agree with the legislature's decision to permit companies operating under price regulation to charge for directory assistance simply does not create irreparable injury or harm to the public.⁷ Because

⁷The CAD's request for an injunction prohibiting BellSouth from putting this tariff into effect also is contrary to the provisions of T.C.A. §65-5-203(b)(1). As the Court of Appeals recently acknowledged, this statute provides that "increased rates may be suspended for an outside limit of nine months while the TRA conducts its investigation, but after six months the utility may, upon notice to the TRA, place the increased rates into effect." *Consumer Advocate Division v. Tennessee Regulatory Authority*, Appeal No. 01-A-10-9708-BC-00291 at 6 (Tenn. Ct. App. July 1, 1998)(Attached as Exhibit 6). As noted above, the CAD has no basis whatsoever for requesting that BellSouth's tariff be denied or even delayed, and the CAD certainly has no basis for requesting an injunction which would vitiate the provisions of this statute.

the CAD cannot meet its burden of proof with regard to its request for an injunction, the TRA should deny the request.

III. CONCLUSION

For the reasons stated above, the TRA should deny the CAD's petition in its entirety because it simply attempts to re-argue issues the CAD has already argued and lost.

Respectfully submitted,

BELLSOUTH TELECOMMUNICATIONS, INC.



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CERTIFICATE OF SERVICE

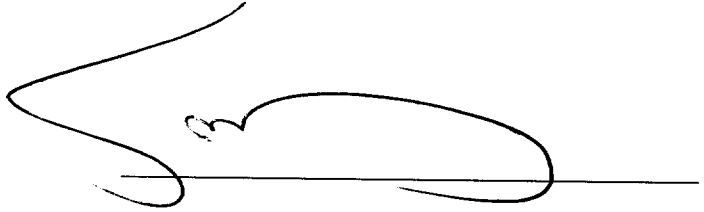
I hereby certify that on June 22, 1999, a copy of the foregoing document was served on the parties of record, via the method indicated:

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☐ Mail
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☐ Overnight

Richard Collier, Esquire
Tennessee Regulatory Authority
460 James Robertson Parkway
Nashville, TN 37243-0500

- ☒ Hand
☐ Mail
☐ Facsimile
☐ Overnight

Vincent Williams, Esquire
Consumer Advocate Division
426 5th Avenue, N., 2nd Floor
Nashville, TN 37243

A handwritten signature in black ink, appearing to read 'Vincent Williams', is written over a horizontal line.

STATE OF TENNESSEE
OFFICE OF THE
ATTORNEY GENERAL
404 JAMES ROBERTSON PARKWAY
PARKWAY TOWERS - SUITE 1504
NASHVILLE, TENNESSEE 37243-0500

February 3, 1995

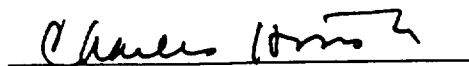
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OFFICE OF THE
EXECUTIVE DIRECTOR

Ms. Jeanne Moran
General Utility Counsel
Tennessee Public Service Commission
460 James Robertson Parkway
Nashville, Tennessee

Dear Ms. Moran:

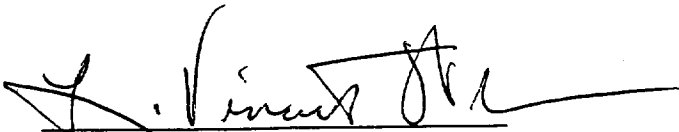
Attached is a settlement agreement between the Consumer Advocate Division and the BellSouth Telecommunications, Inc. d/b/a South Bell Telephone Company regarding the tariff to implement Directory Assistance Charges (Docket No. 94-02876). We respectfully request that this matter be placed on the next Commission Conference agenda scheduled for Tuesday, February 7.

Sincerely,



Charles L. Howorth
General Counsel -
South Central Bell

Agreed,



L. Vincent Williams
Consumer Advocate Division

"DA AGREEMENT"
February 3, 1995

SETTLEMENT AGREEMENT
BETWEEN
THE CONSUMER ADVOCATE DIVISION
AND
BELLSOUTH TELECOMMUNICATIONS, INC.
FEBRUARY 3, 1995

DOCKET NO. 94-02876

BellSouth Telecommunications, Inc. d/b/a South Central Bell Telephone Company (hereinafter referred to as "the Company") and the Consumer Advocate Division hereby agree:

That a fair and equitable agreement regarding the issues surrounding the Company's petition for a directory assistance charge is in the interest of the parties and the public; that the terms set out below represent such a fair and equitable agreement; and that such an agreement should be presented and recommended to the Public Service Commission. Therefore, in consideration of the promises made herein, which are mutually dependent, the parties hereby agree to the following:

1. The parties recognize that the Tennessee Public Service Commission has the authority to approve or disapprove tariffs, rates, and related issues.
2. The Company will provide a free Directory Assistance ("DA") call allowance for each access line service of eight (8) calls for residence customers and five (5) calls for business customers per billing cycle. This allowance will be applied to Local or Intra-NPA Toll DA calls (e.g., a residence customer will get up to 8 free calls in total regardless of whether they are to Local DA or Intra-NPA DA).
3. The per call rate for DA will be \$0.25 for Residence and Business, Local and Intra-NPA Toll.
4. South Central Bell will not file a petition or tariff seeking a DA rate increase or change in allowances for a period of two years from the effective date of this tariff. Nothing in this agreement, however, commits the Consumer Advocate Division to support price or allowance changes at that time.

5. The DA charge will be applicable to all calls with the following exceptions: 1) calls made by residence customers who are unable to use a telephone directory because of a visual or physical disability which can be confirmed by a physician, appropriate group or agency, 2) the first 50 calls, per billing period, made by business customers, who are unable to use a telephone directory because of a visual or physical disability which can be confirmed by a physician, appropriate group or agency, 3) calls made from hospitals and nursing homes, 4) calls made from Public and Semipublic telephone service locations and Customer Provided Public telephones, and 5) calls made by residence customers from their line who are 70 years of age or older and who have applied to the Company for the *DA calling exemption and provided confirmation of their age.
6. All residence local calling card calls dialed 0+ by a person certified as disabled will be exempt from local operator surcharges. This will include calls dialed 0+411. This will allow a person certified as disabled to access DA free of charge away from his or her home.
7. The Company will make up to three (3) copies of all local calling area directories, both white and yellow page directories, available to each customer upon request, free of charge. (non-tariff item)
8. The Company will continue to provide directories outside of the local calling area in the same manner as before the tariff (non-tariff item).
9. The tariff to provide the Customer Name and Address (CNA) will not be included in the present filing. Instead, the Company will conduct a statistical sample of customers to determine the public sentiment regarding CNA service. South Central Bell will not file a petition for tariffs seeking to offer CNA for a period of two years from the effective date of the tariff, unless it is determined that the majority of customers want this service. The Company will work together with the Consumer Advocate as the sample is taken. Nothing in this agreement binds the Consumer Advocate to support a CNA filing by the Company.

10. The revenue and cost savings generated by implementing a DA charge will be offset as follows (NOTE: numbers are approximate. The Company will work to make the net effect of the entire tariff as close to \$0 as possible.):

| | |
|---------------------------------|-----------|
| Toll reduction on mileage bands | (\$5.7M) |
| Elimination of zone charges | (\$7.1M) |
| Reduction of grouping charges | (\$6.8M) |
| | (\$19.6M) |

Minor deviations within the categories may occur, however, it is the intent of the parties that the net effect of the tariff(s) will be zero. Contemporaneously with filing the revised tariff for directory assistance, the Company will file tariffs to accomplish these reductions or charges.

11. The Company will take the following measures to educate the consumers of Tennessee about this tariff (non-tariff item):

- a). A recorded message will be placed on local DA calls i.e., 411) for three (3) months from the effective date of this tariff. The message will inform customers that there may be a charge, the numbers to call to obtain directories, and that the customer may hang up immediately and not be charged. At the end of the three month period, the recording will be removed.
- b). A bill insert will be provided prior to the effective date of the tariff informing customers of the DA charge, the number to call to obtain an exemption form, and the numbers to call to obtain directories,
- c). A general press release will be issued.
- d). The Company will work with the Coalition for Persons with Disabilities to inform this special needs community about the charge and the exemption procedure.

12. The proposed effective date of this tariff will be March 15, 1995, if the related tariffs outlined in paragraph 10 are also

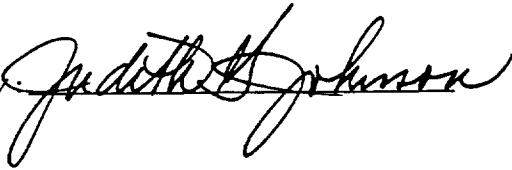
effective.

13. The Consumer Advocate and the Company agree to issue separate press releases on the settlement but they will be issued simultaneously. Both parties agree to share input to each respective press release prior to issuance of the releases.
14. The Consumer Advocate and the Company agree to approach the Tennessee Public Service Commission jointly to communicate the agreement.
15. Upon execution of this agreement in principle, and review of the actual tariff(s), the Consumer Advocate agrees to support the tariff(s) which conform(s) to this agreement as stipulations of fact. This the 3rd day of February, 1995.

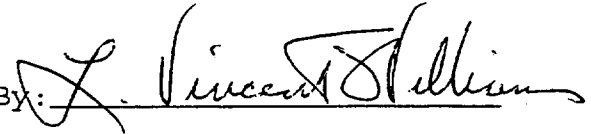
South Central Bell

Consumer Advocate Division

By:



By:



BEFORE THE TENNESSEE REGULATORY AUTHORITY
NASHVILLE, TENNESSEE
AUGUST 13, 1996

CONFERENCE

ORIGINAL

BEFORE: CHAIRMAN LYNN GREER
DIRECTOR SARA KYLE
DIRECTOR MELVIN MALONE

APPEARANCES:

Eddie Roberson, Executive Secretary
Dianne Neal, General Counsel
Ed Phillips, Legal Division
Penny Register, Legal Division
Ron Jones, Office of Director Malone
Dr. Chris Klein, Utility Rates Division
Hal Novak, Utility Rates Division
Mike Gaines, Utility Rates Division
Dr. Austin Lyons, Telecommunications Division
Roger Knight, Technical Adviser

| ITEM DKT.NO. | DESCRIPTION | DISPOSITION | PAGE |
|-----------------|--------------------------------------------------------------------------------------------------|--------------------------------------|---------|
| 1)95-00462 | Zeta Image, Inc. Complaint v. UTSE Motion for Oral Argument | Moved to heel of docket | 5 68 |
| 2)95-03175 | Worldcom, Inc., dba LDDS Metro Media-name change to WorldCom, Inc. dba LDDS WorldCom | Unanimously approved | 5 |
| 3)96-01201 | SE Tel.-name change to SouthEast Telephone, LP | Unanimously approved | 5 |
| 4)96-01197 | United Tel-SE Tariff 96-142 to provide Special Contract to Sprint Publishing | Unanimously approved | 6 |
| 5)96-01198 | Century Tel of Claiborne Tariff 96-143 Concession Rates to Schools | Unanimously approved Item Nos. | 6 |
| 6)96-01299 | Century Tel of Adams- ville, Tariff 96-144 Concession Rates to Schools | 5, 6, 7 | |
| 7)96-01200 | Century Tel of Ooltewah- Collegedale, Inc. Tariff 96-145 Concession Rates to Schools | | |

| ITEM DKT.NO. | DESCRIPTION | DISPOSITION | PAGE |
|-----------------|--------------------------------------------------------------|-------------------------------------------------------------------|------|
| 8)96-01152 | AT&T-petition for arbitration (Motion for Status Conference) | Directors will serve as arbitrators; status conference set | 7 |
| 9) | Applications for authority- Interexchange Resellers | Unanimously approved grant of authority to all carriers in Item 9 | 65 |
| 95-03364 | TennTel, Inc. | | |
| 96-00163 | Long Distance Services | | |
| 96-00875 | Optex, Inc. | | |
| 96-01066 | Econophone, Inc. | | |
| 95-03842 | V.I.P. Telephone Network | | |
| 96-01005 | United Telecom of America | | |
| 96-00827 | Zenex Long Distance | | |
| 96-00197 | American Intl. Telephone | | |
| 96-00901 | Innovative Telecom | | |
| 96-00890 | Norlight, Inc. | | |
| 95-03352 | Premier Communications | | |
| 96-01081 | 360 Long Distance | | |
| 96-00870 | Common Concerns | | |
| 96-00142 | XtraCom, Inc. | | |
| | Local Resellers | | 65 |
| 96-00982 | Dial & Save of TN | | |
| | COCOT Providers | | 65 |
| 96-00917 | Carlton Enterprises | | |
| 96-01080 | Chattanooga Tent Company | | |
| 96-01086 | RCM Gifts, Inc. | | |
| 96-00970 | Scott Renfro | | |
| 96-01139 | Joe Mullins | | |
| 96-01190 | James A. Stephens | | |
| 96-01112 | Kelly Communications | | |
| 96-01087 | A & S World Trade | | |
| 96-00838 | Pay Com, Inc. | | |
| 96-01131 | The Pay Phone Company | | |
| | (Transfer of Authority from Crystal Palace) | | |
| 96-01203 | D & D Marketing, Inc. (Name change from D & D Marketing) | | |
| 96-01209 | Harris Investment Co., Inc. | | 66 |
| 10) | Finality of PSC Cases | Unanimously | 66 |
| | Pending 6/30/96 not recommenced with TRA | dismissed | |
| 96-00837 | Investigation Complaint | | |
| | BellSouth terminate price cap regulation of AT&T | | |
| 96-00799 | Chattanooga Gas (Main & Service Line Extension Rules) | | |

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| ITEM DKT.NO. | DESCRIPTION | DISPOSITION | PAGE |
|-----------------|-----------------------------------------------------------------------|------------------------------------|------|
| 96-00650 | AT&T Tel (Exemption Services) | | |
| 96-00599 | MCI (Friends/Family Tariffs) | | |
| 96-00572 | UTSE-Petition for Waiver | | |
| 96-00413 | Chattanooga Gas (Experimental Rule) | | |
| 96-00199 | MCI add Directory Asst. Language in tariff | | |
| 95-02789 | AT&T Complaint to Implement Non-Discriminatory Interconnection v. SCB | | |
| 95-02634 | AT&T Complaint v. SCB | | |
| 95-01147 | Digital Tel-transfer authority | | |
| 94-02876 | SCB (Directory Assistance) | | |
| | Reseller & Customer Owned Coin Operated Tel Applicants | | |
| 95-04089 | SmarTel Communications | | |
| 96-00059 | MicroComm | | |
| 95-03222 | Interstate Savings | | |
| 96-00857 | Minimum Rate Pricing | | |
| 96-00564 | Preferred Telecom, dba The Secure Card | | |
| 96-00611 | Advantage Communications | | |
| 95-03755 | Touch Tone America | | |
| 95-03376 | American Telnet Billing Services | | |
| 95-03381 | Access Unlimited | | |
| 95-03106 | Coastal Communications | | |
| 95-03169 | Answer-Net, Inc., dba Digital Network | | |
| 95-03005 | Transaction Network Services | | |
| 95-03129 | US Telcom Group | | |
| 11) | Miscellaneous Business | | |
| 1) | Statement of the Duties of Chairman | Unanimously adopted recommendation | 67 |
| 2) | Payphone Consultants | Disissed Petition Unanimous | 69 |

1
2 CONFERENCE OF
3 TENNESSEE REGULATORY AUTHORITY

4 AUGUST 13, 1996
5

6 The regularly scheduled Conference of the
7 Tennessee Regulatory Authority was called to order on
8 August 13, 1996 at 9:00 a.m. by Chairman Lynn Greer.
9 Present were Directors Sara Kyle and Melvin Malone. The
10 following proceedings were had:

11 PROCEEDINGS

12 CHAIRMAN: Let the record show that all
13 Directors are present. Mr. Executive Secretary.

14 MR. ROBERSON: Thank you, Mr. Chairman.
15 The first item is Docket No. 96-00462, Zeta Image, Inc.
16 Complaint of Zeta Image, Inc. v United Telephone-
17 Southeast a Motion for Oral Argument.
18

19 DIRECTOR KYLE: I so move and suggest that
20 we set a date.

21 CHAIRMAN: I guess we have got two choices
22 in setting a date. If both parties are prepared we could
23 move it to the heel of the calendar this morning for our
24 hearings. We have got four hearings this morning. This
25 would make our fifth if both are prepared. Are both
parties prepared?

1 MESSRS. WALKER AND WRIGHT: We are.

2
3 CHAIRMAN: Okay, if that is satisfactory
4 with the Commissioners and we have a second to the motion
5 and we will set it at the heel of the calendar. Record
6 that as a unanimous vote.

7 MR. ROBERSON: The second matter is
8 Docket No. 95-03175. WorldCom, Inc., d/b/a LDDS
9 WorldCom, a name change for LDDS Communications.

10 DIRECTOR KYLE: I so move and recommend it
11 for approval.

12 DIRECTOR MALONE: I second the motion.

13 CHAIRMAN: Make it unanimous.

14 MR. ROBERSON: Next is Docket No. 96-
15 01201, Southeast Telephone Limited Partnership, a
16 petition for name change of SouthEast Telephone Limited
17 Partnership, Ltd. to SouthEast Telephone L.P.

18 DIRECTOR KYLE: I recommend approval of
19 the requested name change.

20 DIRECTOR MALONE: Second the motion.

21 CHAIRMAN: Make it unanimous.

22
23 MR. ROBERSON: The next matter is Docket
24 No. 96-01197. United Telephone-Southeast, Tariff 96-142
25 to provide a special contract arrangement to Sprint
Publishing and Advertising.

1 MR. ROBERSON: Yes, thank you. It's 96-
2 01209, Harris Investment Company, Inc.
3

4 CHAIRMAN: Would you like to make a
5 comment about that?

6 MR. ROBERSON: Well, the staff has
7 reviewed that application, and the staff recommends
8 approval.

9 CHAIRMAN: Okay. I would like to have a
10 motion that we waive the rules and add that to the --

11 DIRECTOR KYLE: So move.

12 DIRECTOR MALONE: Second.

13 CHAIRMAN: Okay. Thank you. Unanimous.
14 So now we need a motion to approve all of them including
15 the additional one.

16 DIRECTOR KYLE: So move.

17 DIRECTOR MALONE: Second.

18 CHAIRMAN: Make it unanimous. The last
19 item on the agenda.

20 MR. ROBERSON: We have 11 cases of
21 finality of PSC cases pending on June 30, not recommenced
22 with the TRA pursuant to this Agency's administrative
23 orders. We have 11 cases and we have 13 reseller and
24 customer owned coin owned telephone applications that
25 were not recommenced.

1
2 CHAIRMAN: I suppose it is appropriate
3 that we have a motion to dismiss those cases. I will so
4 move.

5 DIRECTOR KYLE: I second.

6 DIRECTOR MALONE: I will make it
7 unanimous.

8 CHAIRMAN: Okay.

9 MR. ROBERSON: You have something under
10 miscellaneous.

11 CHAIRMAN: In the process of operating
12 the agency, I have drawn up a recommendation as a job
13 description for the duties of the Chairman. While this
14 is strictly an internal procedure, we felt that and I
15 felt that it was appropriate that we bring it to a vote.
16 So, let me read the recommendation:

17
18 The Chairman acts -- this is a job
19 description for the Chairman of the Board. "The
20 Chairman acts as the presiding officer of the Tennessee
21 Regulatory Authority during Authority Conferences, public
22 hearings and oral arguments. In addition, the Chairman
23 is responsible for overseeing the daily operations of the
24 agency through the review and approval of expenditures
25 and all travel requests. All policies established by
the Authority shall be communicated to the Executive

TENNESSEE REGULATORY AUTHORITY

Lynn Greer, Chairman
Sara Kyle, Director
Melvin Malone, Director



AUG 1996
RECEIVED
Regulatory
460 James Robertson Parkway
Nashville, Tennessee 37243-0505

August 19, 1996

Mr. Robert Reynolds
BellSouth Telecommunications
Floor 22, A1
333 Commerce Street
Nashville, Tennessee 37201-3300

Dear Mr. Reynolds:

This is to acknowledge receipt of your letter dated February 6, 1995 enclosing notice of the following General Subscriber Services Tariff as listed in your letter.

This tariff filing (94-223, docket 94-02876) is being made to establish regulation, rates and charges for the provision of Directory Assistance Service in Tennessee. This filing was closed by action of the Authority during the Conference of August 13, 1996 under docket 94-02876, and will not become effective.

Sincerely,

Mike Gaines
Telecommunications Manager

enclosure

MGmt

Fax'd, Dist. Emailed

8-22-96

YH

8/23

SEE TARIFF FILING:

com- Corresp.
8-19-96

TENNESSEE REGULATORY AUTHORITY

Lynn Greer, Chairman
Sara Kyle, Director
Melvin Malone, Director



460 James Robertson Parkway
Nashville, Tennessee 37243-0505

NOTICE TO ADMINISTRATIVE ORDER No. 1

DATE: July 18, 1996

IN RE: COMMENCEMENT OF PROCEEDINGS BEFORE THE TENNESSEE
REGULATORY AUTHORITY OF MATTERS PENDING BEFORE THE PUBLIC
SERVICE COMMISSION ON JUNE 30, 1996.
ADMINISTRATIVE ORDER No. 1

On July 9, 1996, the Tennessee Regulatory Authority (TRA) voted to approve procedures whereby the petitioner in docket(s) before the Public Service Commission (PSC) could seek to recommence the docket(s) before the TRA. As set forth in the attached order, a petitioner who had a pending docket before the PSC and wishes to recommence it before the TRA must do the following:

1. File with the TRA a simple petition to recommence the case within fourteen (14) days of the receipt of the attached order, and attach a copy of the original date stamped pleading filed before the PSC, and request that the identifying docket number remain the same;
2. The petitioner must request that credit be granted for the filing fee paid to the PSC, attaching a copy of the original check;
3. The petitioner in an uncontested proceeding should request that the record before the PSC be adopted as the record before the TRA;
4. The petitioner whose case includes previously granted orders of intervention, must submit the agreement of the parties to stipulate to the record established before the PSC, including pre-filed testimony not admitted into evidence;
5. The petitioner in a contested case where the parties cannot agree to stipulate may immediately file a new petition or tariff with the TRA;
6. The parties to a proceeding may request a status conference through the Executive Secretary's office after commencement has been filed.

If you have any questions please contact the Office of the Executive Secretary at (615) 741-2776.

FOR THE TENNESSEE REGULATORY AUTHORITY:

A handwritten signature in black ink, appearing to read "Eddie Roberson".

Eddie Roberson
Interim Executive Secretary

Exhibit 4

BEFORE THE TENNESSEE REGULATORY AUTHORITY

July 18, 1996

Nashville, Tennessee

**IN RE: COMMENCEMENT OF PROCEEDINGS BEFORE THE TENNESSEE
REGULATORY AUTHORITY OF MATTERS PENDING BEFORE THE
PUBLIC SERVICE COMMISSION ON JUNE 30, 1996
ADMINISTRATIVE ORDER No. 1**

ORDER

At a regularly-scheduled Authority Conference on July 9, 1996, the Directors discussed the means by which the agency would accept any petitioner's request to refile and recommence any case pending before the Public Service Commission on June 30, 1996, such case having ceased to exist along with the Tennessee Public Service Commission (hereafter, "PSC") by Chapter 305 of the Public Acts of 1995.¹

The Directors determined that, in accordance with Tennessee law, including Tennessee Code Annotated Sections 65-2-101 et seq., the Tennessee Regulatory Authority would take jurisdiction of these pending proceedings if and when a petitioner satisfied the requirements mandated by T.C.A. 65-2-103, and that these requirements could be satisfied in the following manner:

- 1) by the filing of a simple petition to recommence the case, attaching a copy of the date-stamped pleading filed before the PSC, requesting that all identifying docket numbers remain the same; and
- 2) by requesting that credit be granted for the filing fee paid to the PSC, attaching a copy of the original check.

Further, in order that a record made before the PSC be adopted and reopened by the TRA, the Directors provided that a petitioner, in an uncontested proceeding, should ask that the record be adopted as the record before the TRA; however, a petitioner, whose case includes previously granted orders of intervention, must submit the agreement of the parties to stipulate to the record established before the PSC, including pre-filed testimony not admitted into evidence. A petitioner in a contested case where the parties cannot agree to stipulate may immediately file a new petition or tariff with the TRA. Parties may request a status conference.

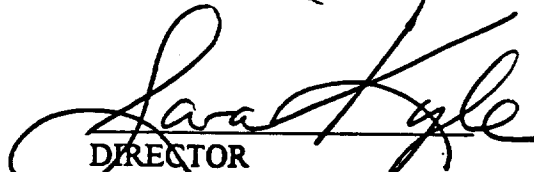
¹ See PSC Order of June 28, 1996, a copy of which is attached and incorporated by reference. T.C.A. 4-29-216(19)(repealed) which functioned to terminate the PSC on June 30, 1995, was subsequently repealed as a housekeeping measure by Section 1 of Chapter No. 305, 1995 Public Acts. Once this termination occurs, an agency continues to function for the one-year wind-up with no diminution of powers, duties, or authority. T.C.A. 4-29-112 and 4-29-115.

The Directors recognized that there may be petitioners who may elect not to petition to recommence their case before the Authority. Even though their case will not legally be before the Authority unless a petitioner proceeds as set out above, in the interest of absolute certainty that a petitioner has had notice of this Authority's decision, the Authority will take up any non-recommended cases in a docket of a regularly-scheduled Conference. Further, the Directors directed that notice of this administrative order be sent, return receipt requested, to all parties in cases which were pending before the PSC on June 30, 1996.

THEREFORE, IT IS ORDERED THAT:

- 1) A petitioner, in a contested proceeding, shall submit the agreement of the parties to stipulate to the record established before the PSC;
- 2) A petitioner, in an uncontested case, shall request that the record, made before the PSC, be adopted as the record before the TRA;
- 3) Notice of the procedures set forth above shall be sent to all parties in the cases which are the subject of this Order, return receipt requested;
- 4) Petitioners shall have fourteen (14) days from receipt of this Order to submit a petition to recommence; and
- 5) At a subsequent Authority Conference, the Directors will take up, as a docketed agenda item, any cases which were pending before the Public Service Commission on June 30, 1996 but in which no petition to recommence has been submitted to the Tennessee Regulatory Authority within the time established by the Directors.


CHAIRMAN


DIRECTOR


DIRECTOR

ATTEST:


INTERIM EXECUTIVE DIRECTOR

BEFORE THE TENNESSEE PUBLIC SERVICE COMMISSION

Nashville, Tennessee

June 28, 1996

**IN RE: FINAL DISPOSITION OF ALL BUSINESS
 PENDING ON JUNE 30, 1996**

ORDER

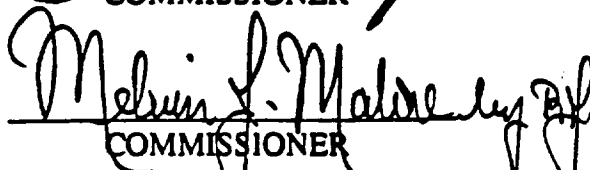
Pursuant to Chapter 305 of the Public Acts of 1995, all business pending before the Tennessee Public Service Commission on June 30, 1996, ceases to exist, along with the agency.

IT IS THEREFORE ORDERED THAT:

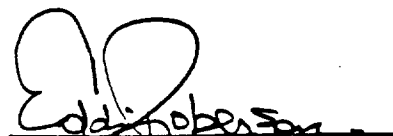
All matters pending before the Commission on June 30, 1996, shall be handled in accordance with Tennessee law.


CHAIRMAN


COMMISSIONER


COMMISSIONER

ATTEST:


EXECUTIVE DIRECTOR

PARTY INITIATED DOCKETS BEFORE THE PUBLIC SERVICE COMMISSION

| | |
|----------------------|------------|
| Docket No. 94-02876• | 96-00758 |
| 95-01147• | 96-00799 |
| 95-02634•• | 96-00837 |
| 95-02789•• | 96-00858 |
| 96-00199 | 96-00942•• |
| 96-00413 | 96-00959 |
| 96-00462 | 96-00976•• |
| 96-00572 | 96-00977 |
| 96-00599 | 96-00885 |
| 96-00650• | 95- 03171 |

Reseller and Customer Owned Coin Operated Telephone Applicants:

| | | |
|-----------|---------|---------|
| COCOTs | 95-3381 | 96-0647 |
| 95-4080 | 95-3376 | 96-0946 |
| 96-0838 | 96-0234 | 96-0940 |
| 96-0149 | 95-3169 | 96-0793 |
| 96-0474 | 95-2620 | 96-0767 |
| 96-1087 | 95-3106 | 96-0682 |
| 96-1080 | 95-3858 | 96-0975 |
| | 95-2678 | 96-0870 |
| RESELLERS | 95-3222 | 96-0876 |
| 96-0163 | 95-2836 | 96-0857 |
| 96-1081 | 96-0059 | 96-0890 |
| 96-1066 | 95-4089 | 96-0877 |
| 96-0611 | 95-2946 | 96-0915 |
| 96-0564 | 95-4090 | 96-0827 |
| 96-0231 | 95-3755 | 96-0875 |
| 96-0197 | 95-3005 | 96-0901 |
| 96-0142 | 95-3129 | 95-3035 |

TENNESSEE REGULATORY AUTHORITY

460 James Robertson Parkway
Nashville, TN 37243-0505

(615) 741-2776

CONFERENCE AGENDA

August 13, 1996, 9:00 AM

▲
AUG 1996
RECEIVED
Dir. - Regulatory

Issue Date: 8-7-96

| Item | Docket Number | Company & Caption |
|------|------------------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| (1) | 96-00462 | ZETA IMAGE, INC. Complaint of Zeta Image, Inc. Vs. United Telephone- Southeast (<i>Motion for Oral Argument</i>) |
| (2) | 95-03175 | WORLDCOM, INC. D/B/A LDDS WORLDCOM Name Change of LDDS Communications, Inc. d/b/a LDDS MetroMedia Communications to WorldCom, Inc. d/b/a LDDS WorldCom |
| (3) | 96-01201 | SOUTHEAST TELEPHONE LIMITED PARTNERSHIP, LTD. Petition for Name Change of SouthEast Telephone Limited Partnership, Ltd. to SouthEast Telephone, L.P. |
| (4) | 96-01197 | UNITED TELEPHONE - SOUTHEAST Tariff 96-142 to Provide a Special Contract Arrangement to Sprint Publishing and Advertising |
| (5) | 96-01198 | CENTURY TELEPHONE OF CLAIBORNE, INC. Tariff 96-143 to Provide Schools with Concession Rates for Switched Data Service and Advanced Digital Service |

- (6) 96-01199 **CENTURY TELEPHONE OF ADAMSVILLE, INC.**
Tariff 96-144 to Provide Schools with Concession Rates for
Switched Data Service and Advanced Digital Service
- (7) 96-01200 **CENTURY TELEPHONE OF OOLTEWAH-
COLLEGEDALE, INC.**
Tariff 96-145 to Provide Schools with Concession Rates for
Switched Data Service and Advanced Digital Service
- (8) 96-01152 **AT&T COMMUNICATIONS OF THE SOUTH CENTRAL
STATES, INC.**
Petition for Arbitration (Motion of AT&T for Status Conference)

(9) **APPLICATIONS FOR AUTHORITY FOR SERVICE IN TENNESSEE:**

INTEREXCHANGE RESELLERS

| | |
|----------|---------------------------------------|
| 95-03364 | Tenn-Tel, Inc. |
| 96-00163 | Long Distance Services, Inc. |
| 96-00875 | Optex, Inc. |
| 96-01066 | Econophone, Inc. |
| 95-03842 | V.I.P. Telephone Network, Inc. |
| 96-01005 | United Telecom of America, Inc. |
| 96-00827 | Zenex Long Distance, Inc. |
| 96-00197 | American International Telephone Inc. |
| 96-00901 | Innovative Telecom Corp. |
| 96-00890 | Norlight, Inc. |
| 95-03352 | Premiere Communications, Inc. |
| 96-01081 | 360 Long Distance Inc. |
| 96-00870 | Common Concerns, Inc. |
| 96-00142 | XtraCom, Inc. |

LOCAL RESELLERS

| | |
|----------|--------------------------|
| 96-00982 | Dial & Save of Tennessee |
|----------|--------------------------|

COCOT PROVIDERS

| | |
|----------|----------------------------------------------------------------------|
| 96-00917 | Carlton Enterprises |
| 96-01080 | Chattanooga Tent Company |
| 96-01086 | RCM Gifts, Inc. |
| 96-00970 | Scott Renfro |
| 96-01139 | Joe Mullins |
| 96-01190 | James A. Stephens |
| 96-01112 | Kelly Communications |
| 96-01087 | A & S World Trade |
| 96-00838 | Pay Com, Inc. |
| 96-01131 | The Pay Phone Company (Transfer of Authority from Crystal Palace) |
| 96-01203 | D & D Marketing, Inc. (Name Change from D & D Marketing) |

(10)

FINALITY OF PSC CASES PENDING ON JUNE 30, 1996, NOT RECOMMENDED WITH THE TRA PURSUANT TO THIS AGENCY'S ADMINISTRATIVE ORDERS.

| | |
|----------|-------------------------------------------------------------------------------------------------------------------|
| 96-00837 | Investigation into Complaint of BellSouth to terminate price cap regulation of AT&T and investigate its earnings. |
| 96-00799 | Chattanooga Gas Company-(Main & Service Line Extension Rules) |
| 96-00650 | AT&T (Exemption of Services) |
| 96-00599 | MCI Telecommunications (Friends & Family, Tariffs 96-038, 96-055, 96-086) |
| 96-00572 | United Telephone Southeast Inc. - (Petition for Waiver) |
| 96-00413 | Chattanooga Gas Company-(Experimental Rule) |
| 96-00199 | MCI Communications to add Directory Assistance Language to Tariff (96-008) |
| 95-02789 | AT&T - (Complaint to Implement Non-Discriminatory Interconnection Against SCB) |
| 95-02634 | AT&T - (Complaint of AT&T vs. South Central Bell) |
| 95-01147 | Digital Telecommunications Inc. (Transfer of Authority) |
| 94-02876 | South Central Bell (Directory Assistance) |

RESELLER & CUSTOMER OWNED COIN OPERATED TELEPHONE APPLICANTS

| | |
|----------|--------------------------------------------------------|
| 95-04089 | SmarTel Communications |
| 96-00059 | MicroComm |
| 95-03222 | Interstate Savings, Inc. |
| 96-00857 | Minimum Rate Pricing |
| 96-00564 | Preferred Telecom, Inc. d/b/a/ The Secure Card Company |
| 96-00611 | Advantage Communications Group, Inc. |
| 95-03755 | Touch Tone America, Inc. |
| 95-03376 | American Telnet Billing Services, Inc. |
| 95-03381 | Access Unlimited, Inc. |
| 95-03106 | Coastal Communications Company, Inc. |
| 95-03169 | Answer-Net Inc. d/b/a Digital Network, Inc. |
| 95-03005 | Transaction Network Services Inc. |
| 95-03129 | US Telcom Group, Inc. |

(11)

MISCELLANEOUS BUSINESS.

- 1) Statement of the Duties of Chairman

IN THE COURT OF APPEALS OF TENNESSEE
AT NASHVILLE

FILED

JUL 01 1998

Clerk of the Courts

CONSUMER ADVOCATE DIVISION,)

Petitioner/Appellant,)

VS.)

TENNESSEE REGULATORY
AUTHORITY; NASHVILLE GAS
COMPANY,)

Respondents/Appellees.)

Appeal No.

01-A-01-9708-BC-00391

Tennessee Regulatory Commission
No. 96-00977

APPEALED FROM THE TENNESSEE REGULATORY COMMISSION
AT NASHVILLE

JOHN KNOX WALKUP
Attorney General & Reporter

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Assistant Attorney General
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Attorney for Petitioner/Appellant

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Greensboro, North Carolina 27402
Attorneys for Respondent/Appellee Nashville Gas Company

HENRY WALKER
414 Union Street, Suite 1600
Nashville, Tennessee 37219
Attorney for Intervening Appellant Associated Valley Industries

AFFIRMED AND REMANDED

OPINION

This petition under Rule 12, Tenn. R. App. Proc., to review a rate making order of the Tennessee Regulatory Authority presents a host of procedural and substantive issues. We affirm the agency order.

I.

On May 31, 1996 Nashville Gas Company (NGC) filed a petition before the Tennessee Public Service Commission requesting a general increase in its rates for natural gas service. The proposed rates would produce an increase of \$9,257,633 in the company's revenue. The Consumer Advocate Division (CAD) of the State Attorney General's office filed a notice of appearance on June 6, 1996 and Associated Valley Industries (AVI), a coalition of industrial users of natural gas, entered the fray on August 20, 1996.

The Public Service Commission was replaced on July 1, 1996 by the Tennessee Regulatory Authority (TRA), a new agency created by the legislature. By an administrative order, TRA laid down the procedure by which it would accept jurisdiction of matters previously filed before the Public Service Commission, and the parties successfully navigated the uncharted waters of the TRA to get the case ready for a final hearing on November 13, 1996.

At a scheduled conference on December 17, 1996, the TRA orally approved a general rate increase for NGC, effective January 1, 1997, that would produce approximately \$4,400,000 in new revenue. When a final order had not been filed by December 31, 1996, NGC began charging the rates orally approved at the conference on December 17. On February 19, 1997 TRA filed its written order

adopting the oral findings of December 17, 1996. The order allowed the increased rates "for service rendered on and after January 1, 1997."

II. The Procedural Issues

a.

Was the TRA required to appoint an administrative law judge or hearing officer to conduct the hearing?

The Tennessee Administrative Procedures Act provides that a contested case hearing shall be conducted (1) in the presence of the agency members and an administrative judge or hearing officer or (2) by an administrative judge or hearing officer alone. Tenn. Code Ann. § 4-5-301(a). The CAD asserts that the TRA's order in this case is void because the agency did not follow the mandate of this statute.

The TRA, however, is also governed by an elaborate set of procedural statutes. See Tenn. Code Ann. § 65-2-101, et seq. Tenn. Code Ann. § 65-2-111 provides that the TRA may direct that contested case proceedings be heard by a hearing examiner, and we held in *Jackson Mobilphone Co. v. Tennessee Public Service Comm.*, 876 S.W.2d 106 (Tenn. App. 1994), that the TRA's predecessor, the Public Service Commission, could conduct a contested case hearing itself or appoint a hearing officer. We think that decision is still good law and that it applies to the TRA.

b.

Did the TRA staff conduct its own investigation and improperly convey ex parte information to the TRA?

The CAD argues that the TRA violated two sections of the UAPA in the proceeding below: (1) the section prohibiting a person who has served as an

investigator, prosecutor, or advocate in a contested case from serving as an administrative judge or hearing officer in the same proceeding, Tenn. Code Ann. § 4-5-303; and (2) the section prohibiting ex parte communications during a contested case proceeding, Tenn. Code Ann. § 4-5-304.

As to the first contention, there is nothing in the record that supports it. The Regulatory Authority members sat as a unit to hear the proof in the hearing below. We have held that they were entitled to do so. There is no proof that any of them had served as an investigator, prosecutor, or advocate in the same proceeding.

As to the second contention, it is based on the CAD's suspicion that members of the TRA staff had taken part in an investigation of NGC, had prepared a report for the Authority, and had, in fact, continued to communicate with NGC and relay that information to the Authority members.

At the beginning of the hearing the Consumer Advocate moved to discover what he described as a report from the staff that augmented or boosted the position of one party or the other. He admitted that he did not know that such a report existed but that he believed it did, because of the past practice before the Public Service Commission.

The Authority chairman moved to deny the motion with the following explanation:

I believe that as a director I have a right to have privileged communication with a member of my staff for the purpose of understanding issues and analyzing the evidence in the many complicated proceedings that this Agency has to hear. I reject your allegation that I have abdicated my responsibility as a decision maker. I rely on my staff expertise as the law permits me to do so. Therefore, I move that your motion be denied.

The Agency members unanimously denied the CAD's motion.

*Staff ^{NGC} ~~to~~ to TRA directors
"based on the record before the
TRA" are not subject to
discovery.*

*passing along to the TRA evidence
received from a party is
prohibited*

On this part of the controversy we are persuaded that the TRA was correct. The TRA deals with highly complicated data involving principles of finance, accounting, and corporate efficiency; it also deals with the convoluted principles of legislative utility regulation. To expect the Authority members to fulfill their duties without the help of a competent and efficient staff defies all logic. And, we are convinced, the staff may make recommendations or suggestions as to the merits of the questions before the TRA. See Tenn. Code Ann. § 4-5-304(b). Otherwise, all support staff -- law clerks, court clerks, and other specialists -- would be of little service to the person(s) that hire them. We are satisfied that any report made by the agency staff based on the record before the TRA was not subject to the CAD's motion to discover it.

The other part of the CAD's contention is more troubling. It contains an assertion that members of the TRA staff were passing along to the TRA evidence received from NGC. We would all agree that such ex parte communications are prohibited. See Tenn. Code Ann. § 4-5-304(a) and (c).

In support of his contention Consumer Advocate called the manager of the utility rate division who testified that he did an investigation of NGC under an audit. At that point the parties engaged in a general discussion about the Authority's prior ruling that the staff members' advice could not be discovered. A question about whether his advice was based on anything other than the facts in the record was excluded after an off-the-record discussion, and the witness was asked only one other question. He answered "yes" when asked if he had talked with the company or company officials since the time of the audit. There were no questions bearing on the nature of the conversations, or whether the witness received or disseminated any information pertinent to the NGC proceeding.

We cannot find on the basis of the evidence in this record that the Agency received any ex parte communications that were prejudicial to the CAD's position. We would add only one further point: that administrative agencies should ensure compliance with the Administrative Procedures Act.

c.

**Did NGC unlawfully put its
new rates into effect on January 1, 1997?**

The CAD argues that since no written order had been entered allowing the rate increase, NGC had no authority to start charging the increased rates, and the TRA's February order amounted to retroactive ratemaking.

The TRA has the power to fix just and reasonable rates "which shall be imposed, observed, and followed thereafter" by any public utility. Tenn. Code Ann. § 65-5-201. But the statutory scheme -- which is the same as it was during the existence of the Public Service Commission -- recognizes that a public utility may set its own rates, subject to the power given to the TRA to determine if they are just and reasonable. Tenn. Code Ann. § 65-5-203(a). See *Consumer Advocate Division v. Bissell*, No. 01-A-01-9601-BC-00049 (Tenn. App., Nashville, Aug. 26, 1996). The increased rates may be suspended for an outside limit of nine months while the TRA conducts its investigation, *id.*, but after six months the utility may, upon notice to TRA, place the increased rates into effect. Tenn. Code Ann. § 65-5-203(b)(1). The authority may require a bond in the amount of the proposed annual increase. *Id.*

In this case, NGC filed its petition on May 31, 1996. Because the Public Service Commission was replaced by the TRA on July 1, 1996, NGC refiled the petition on July 29, 1996. The CAD argues that the petition, therefore, had not been pending for the six months period that would allow NGC to put the rates into effect.

Under the circumstances of this case, however, we think that argument exalts form over substance. The TRA had heard the proof, and in an open meeting had announced its decision to allow part of the rate increase to go into effect on January 1, 1997. While a written order had not been entered, NGC notified the TRA that it would put the approved rates into effect on the date specified in the TRA's oral decision.

In our view, the increased rates had been pending since May. The hiatus between May and July was caused by a massive overhaul of the state regulatory machinery, and that fact cannot be attributed to NGC. So, under the statutory scheme, NGC had the power to put the approved rates into effect on January 1, 1997.

In addition, Tenn. Code Ann. § 65-2-112 says "Every final decision or order rendered by the authority in a contested case shall be in writing, or stated in the record" NGC could have used the TRA's oral decision as the basis for its action of putting the rates into effect. The decision had been "stated in the record" on December 17, 1996. We add this caveat, however. The statute goes on to say that either a written or oral decision "shall contain a statement of the findings of fact and conclusions of law upon which the decision of the authority is based." We do not express an opinion on whether the December 17 oral decision complies with that mandate. But we do agree that findings of fact and conclusions of law are a necessary requirement for a meaningful review of an administrative agency's decision. See *Levy v. State Bd. of Examiners for Speech Pathology & Audiology*, 553 S.W.2d 909 (Tenn. 1977).

III. The Substantive Issues

a. Hearsay

The CAD argues that some of the evidence offered by NGC's expert on the projected increase in company expenses was based on rank hearsay. We notice, however, that Tenn. Code Ann. § 65-2-109 allows TRA to admit and give probative effect to any evidence that would be accepted by reasonably prudent persons in the conduct of their affairs. The same statute relieves the TRA from the rules of evidence that would apply in a court proceeding.

The CAD does not address the question of whether the evidence it calls hearsay is, nevertheless, of the kind that would be relied on by reasonably prudent persons in the conduct of their affairs. NGC argues that the evidence was not hearsay because it was based on the company records that are kept in the ordinary course of business. See Tenn. R. Evid. 801, 803(6). We need not decide whether the proffered evidence was hearsay because we are satisfied that the evidence was reliable and could be considered by the TRA. The TRA heard the objections to the evidence and the CAD's argument that its evidence on the same subject should have been received. The TRA chose NGC's evidence as more reliable. We find no fault with the TRA's decision on this issue.

b. Advertising

This is an issue on which the briefs of the principal parties seem to be speaking different languages. The following explanation is the best we can glean from the record. In 1984 the Public Service Commission adopted a rule that disallowed as a recoverable expense by a utility any "promotional or political advertising." The prohibition covered advertising for the purpose of encouraging any

person to select or use gas service or additional gas service. It did not cover (among other things) advertising informing customers how to conserve energy or to reduce peak demand for gas, or advertising promoting the use of energy efficient appliances. See former Rule 1220-4-5-.45, Tenn. Regs.

In a 1985 proceeding involving a rate increase application by NGC, the Commission deviated from the rule and allowed advertising expenses up to .5% of revenues. In March of 1996 the Commission repealed 1220-4-5-.45 and proposed a new rule that would allow a utility to recover "all prudently incurred expenditures for advertising." Apparently the rule had not made it completely through the adoption procedure when the TRA heard this case below.

Nevertheless, based on proof of \$1,486,000 in external advertising expenses, \$800,000 in marketing personnel payroll and \$300,000 in miscellaneous sales expenses, the TRA allowed the recovery of all but approximately half of the external advertising expenses. The CAD urged disallowance of all the related expenses except approximately \$647,000 and NGC claims that the TRA erred in reducing the external operating expenses because there was no proof that they were imprudently incurred.

We think the TRA was justified in its conclusion on this issue. Based on the testimony in the record that the advertising expenses were incurred to meet competition, to add new customers on existing mains, and to get existing customers to use more gas, the TRA concluded that the rate payers benefited from at least part of the external advertising.

c. The Long Term Incentive Plan

The TRA allowed NGC to recover approximately one-half of the cost of its Long Term Incentive Plan. The CAD opposes the allowance of any of this expense on the basis that the plan encourages executives to seek growth through rate increases instead of through performance gains. According to the CAD, the plan does not promote improved service.

NGC offered evidence, however, that the plan had increased employee efficiency and had reduced the number of company employees per customer in Tennessee. The savings amounted to \$7 million annually in wages and salaries. The same witness rebutted the CAD witness who testified that the plan encourages employees to seek rate increases rather than improved efficiency.

None of the parties to the appeal cited any authority governing the allowance of incentive payments in utility rate cases. The proof included some references to cases in other jurisdictions where that state's utility commission had allowed either 100% of the incentive payments or some fraction thereof. The consensus seems to be to look at each plan on a case by case basis and view each plan in the context of the utility's total compensation package.

We do not think the TRA erred in the treatment of the long term incentive plan in this case.

d. Rate of Return

NGC requested a rate of return on equity in the range of 13% to 13.25%. The CAD requested an 11% rate of return and offered expert testimony showing that

monthly compounding of the company's income would raise the rate of return to 11.60%. The TRA set a rate of return of 11.5%.

We fail to see how either side could make much of a case on appeal. The TRA's findings and conclusions are supported by evidence in the record that is both substantial and material. See Tenn. Code Ann. § 4-5-322(h). A proper rate of return is not a point on a scale, *Tennessee Cable Television Ass'n v. PSC*, 844 S.W.2d 151 (Tenn. App. 1992), it covers a fairly broad range, as indicated by the testimony of the competing experts in this case. We affirm the TRA's decision on this point.

We take no position on the issue of the compounding effect of the company's receipts. It is a concept that is new to us in utility regulation, and its merits need to be explored more thoroughly than they have been in this record.

IV. The Rate Design

The intervenor, AVI, challenges the part of the TRA's order that raised the "tailblock" rate for gas supplied to NGC's largest interruptible customers. The tailblock rate is the lowest rate charged per unit and it applies to usage of over 9,000 decatherms per month.¹ NGC's petition did not seek any increase in the rates falling in this category. The CAD's proof proposed that any changes be spread to all customer classes, but the intervenor sought an overall rate decrease. AVI's witness testified that industrial rates were set well above costs and should not be increased. The TRA's order increased the tailblock rate from \$0.21 per decatherm to \$0.228 per decatherm. The TRA said in its order:

¹There are three other blocks in the interruptible industrial category of users. Block one applies to usage of 1-1,500 decatherms per month; block two covers the 1,501-4,000 category; and block three applies to the 4,001-9,000 category.

After careful consideration of the testimony and exhibits of the parties, the Authority finds that the rate increase approved herein should be spread equally to all customers. It is the intent of the Authority to spread this increase to all ratepayers, including interruptible Sales customers, Transportation customers, and Special Contract customers, in order to minimize the overall impact of this rate change. In addition, the Authority concludes that the residential customer charge should be increased from \$6.00 per month to \$7.00 per month.

We think the question of whether to spread the rate increase to all classes of users was within the discretion of the TRA. In *CF Industries v. Tenn. Pub. Serv. Comm.*, 599 S.W.2d 536 (1980), our Supreme Court said:

Specifically, there is no requirement in any rate case that the Commission receive and consider cost of service data, or what such data, if in the record, are to be accorded exclusivity. It is self-evident that cost of service is of great significance in the establishment of rates but is of lesser value in arriving at rate design. A fair rate of return to the regulated utility is one thing; the establishment of rates among various customer classes is quite another.

599 S.W. at 542.

* * *

Thus, the Public Service Commission in rate making and design cases is not solely governed by the proof although, of course, there must be an adequate evidentiary predicate. The Commission, however, is not hamstrung by the naked record. It may consider all relevant circumstances shown by the record, all recognized technical and scientific facts pertinent to the issue under consideration and may superimpose upon the entire transaction its own expertise, technical competence and specialized knowledge. Thus focusing upon the issues, the Commission decides that which is just and reasonable. This is the litmus test – nothing more, nothing less.

599 S.W. at 543.

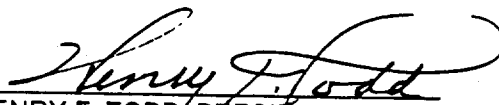
We think it would be a rare case where the court would interfere with a rate increase spread evenly over all classes of users. If the rate design is inequitable it was not established in this proceeding. Therefore, a request that the rate increase

be applied unevenly is, in fact, a request to change the rate design -- on which the intervenor would have the burden of proof. A change would have to be shown by a greater amount of proof than appears in this record.

The TRA's order is affirmed and the cause is remanded to the ~~Tennessee Regulatory Authority for enforcement~~. Tax the costs on appeal to the Consumer Advocate Division.


BEN H. CANTRELL, JUDGE

CONCUR:


HENRY F. TODD, PRESIDING JUDGE
MIDDLE SECTION


WILLIAM C. KOCH, JR., JUDGE